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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/935,717	09/23/1997	MICHAEL CATT	IMIN.P-014	8965
21121	7590	09/30/2004	EXAMINER	
OPPEDAHL AND LARSON LLP P O BOX 5068 DILLON, CO 80435-5068			PORTNER, VIRGINIA ALLEN	
			ART UNIT	PAPER NUMBER

1645

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/935,717

Applicant(s)

CATT ET AL.

Examiner

Ginny Portner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-30 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30 is/are allowed.
- 6) ☐ Claim(s) 11-16, 19-22, 25-27 is/are rejected.
- 7) ☐ Claim(s) 17, 18, 23, 24, 28, 29 and 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 08/935,717
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 11-30, 32-36 are pending.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Allowable Subject Matter***

1. Claim 30 defines over the prior art of record and therefore is allowed.
2. Claims 17-18, 23-24, 28-29 and 36 are objected to as being dependent upon a rejected base claim, but would be allowable if amended into independent form.

#### ***Rejections Withdrawn***

3. The Obviousness Type Double Patenting rejection has been obviated through submission of an effective terminal disclaimer.
4. Claims 31-36 objected to and rejected for depending from a canceled claim has been obviated through amendment of claims 32-36 and cancellation of claim 31.

#### ***Rejections Maintained***

5. Claims 11-16, 19-22, 25-27, 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Catt et al (WO95) for reasons of record.

#### ***Response to Arguments***

6. Applicant's arguments filed August 11, 2004 have been fully considered but they are not persuasive because the prior art still anticipates the instantly claimed invention as amended.
7. Applicant asserts that the recitation of the phrase “thereby forming a lock-and-key interaction between the reading device and the assay device” obviates the rejection under 35

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USC 102 (b) based upon the fact that what is intended is “that engagement to form a lock and key interaction is intended”.

8. In response to Applicant’s traversal, the examiner also references paragraph 14, page 4 of paper number 31504, which states “ The term “engages” defines an interactive relationship between the lock and key configuration but **does not require** the initiation means to **form the lock and key configuration**”... “thus only requiring a portion of the initiation means to be in contact with the assay device” and goes on to state that “The disclosure of WO95 discloses this embodiment as now claimed”. See page 34, claims 12- 13, lines 21-33 of WO95/13531 which requires the incorporation of “interlocking means”, a type of lock and key configuration, as well as the formation of a lock and key interaction for initiation of the reading device. The interaction being disclosed in WO95’ (claims 13), specifically the receiving means includes an actuating means which is triggered by said receipt of the test device, wherein the actuating means causes the reading of the detection zones to be initiated.

The rejection is maintained for reasons of record.

### ***Conclusion***

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginny Portner whose telephone number is (571) 272-0862. The examiner can normally be reached on 7:30-5:00 M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vgp  
September 27, 2004

*L. F. Smith*  
LYNETTE R. F. SMITH  
SUPERVISORY PATENT Examiner  
TECHNOLOGY CENTER 1600